

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city,)	
)	
Plaintiff,)	No. C07-1620MJP
)	
v.)	DEFENDANT'S REPLY IN SUPPORT OF
)	MOTION IN LIMINE RE MITCH LEVY
THE PROFESSIONAL BASKETBALL CLUB,)	AND SHERMAN ALEXIE
LLC, an Oklahoma limited liability company,)	
)	NOTED FOR HEARING:
Defendant.)	JUNE 6, 2008

Mr. Alexie sometimes writes well and is probably a good speaker. He also likes basketball. A lot. It transcends his world, where basketball is a metaphor for life, death, love, family, tribal identity, social mobility, and race relations.

But that all begs the question – should he be a witness in this case? Taking the City at face value, it appears he will be offering expert testimony. Thus, he will testify about the “community building” aspects of the Sonics, the gathering place created by the Sonics, how the Sonics give people a chance to go beyond the boundaries of their neighborhood and ethnic communities, and how sports “provide a unique vehicle for fathers and their children to communicate.”¹

In short, Mr. Alexie intends to offer opinions – lots of them. But he was not listed as an expert witness, nor is he qualified. It is likely, for example, that he does not know the racial

¹ City Opposition Brief at 5.

1 demographics of Sonics fans, either game attendees or television viewers. Nor can he explain,
2 except through the prism of his individual passion, how the Sonics bring neighborhoods and
3 communities together. He is not a sociologist, has not performed any surveys, and has not
4 studied the matter in any recognized scientific way.

5 The PBC appreciates passionate fans. But passion is not sufficient under Fed. R. Evid.
6 702.

7 Mitch Levy is apparently the source of the City's newest theory – the Sonics do not want
8 fans or publicity. Levy, not timely disclosed, will testify that the Sonics went into radio silence.
9 But the PBC did not stop making players available for interviews. This past season, all players
10 were made available to all local media. The principal access point was at the Sonics practice
11 facility, where they were available after every practice. Unlike many other Seattle media outlets,
12 Mr. Levy and his co-hosts were apparently unwilling or unable to leave their studio to meet the
13 players at the practice facility.

14 As to Kevin Durant, the Court might appreciate that he is only 19. Exposing a 19-year
15 old – even a very good basketball player – to relentless media may not be the best approach for a
16 young person's development. Whatever Mr. Levy says, the PBC acted responsibly with a 19-
17 year old still learning the ways of the media.

18 Finally, the City perhaps overstates the importance of Levy and KJR. It is the top-rated
19 sports talk station. But it is also the only one.

20 This case has important witnesses and important issues. The Court should not have to
21 spend its time trying to decide why Sonics players did not appear more frequently on Mr. Levy's
22 show.²

26 ² If Levy is necessary to authenticate an exhibit, it is likely that the PBC will stipulate to
authenticity once it is identified.

1 DATED this 4th day of June, 2008.

2 BYRNES & KELLER LLP

3 By: /s/ Paul R. Taylor, WSBA #14851
4 Bradley S. Keller, WSBA #10665
5 Paul R. Taylor, WSBA #14851
6 Steven C. Minson, WSBA #30974
7 Byrnes & Keller LLP
8 1000 Second Avenue, 38th Floor
9 Seattle, WA 98104
10 Telephone: (206) 622-2000
11 Facsimile: (206) 622-2522
12 Email: bkeller@byrneskeller.com
13 ptaylor@byrneskeller.com
14 sminson@byrneskeller.com

15 Attorneys for Defendant
16 The Professional Basketball Club, LLC
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas A. Carr (thomas.carr@seattle.gov)
Gregory C. Narver (gregory.narver@seattle.gov)
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769

Slade Gorton (slade.gorton@klgates.com)
Paul J. Lawrence (paul.lawrence@klgates.com)
Jeffrey C. Johnson (jeff.johnson@klgates.com)
Michelle Jensen (michelle.jensen@klgates.com)
K&L Gates
925 4th Avenue, Suite 2900
Seattle, WA 98104

/s/ Paul R. Taylor

Paul R. Taylor, WSBA #14851
Byrnes & Keller LLP
1000 Second Avenue, 38th Floor
Seattle, WA 98104
Telephone: (206) 622-2000
Facsimile: (206) 622-2522
ptaylor@byrneskeller.com